

FINAL REPORT
UNDERGROUND STORAGE TANKS
INTERIM STUDY COMMITTEE

April 1994

AUTHORIZATION AND APPOINTMENT

The Underground Storage Tank Interim Study Committee was established by the Legislative Council for the 1993 Legislative Interim to review Iowa's underground storage tank program. The charge to the Committee was to study existing and future funding, distribution of benefits, classifications of sites for cleanup purposes, prioritization of remaining fund moneys, cleanup standards, program deadlines, functions of the Department of Natural Resources and the Underground Storage Tank Fund Board, oversight of the program, and the marketability of petroleum-contaminated property. The Committee was to determine whether the intent of the program is being met by the existing program structure and was to consider the viability of rural service stations when making recommendations.

Members serving on the Committee were:

Senator Emil Husak, Co-chairperson
Representative Bob Rafferty, Co-chairperson
Senator Brad Banks
Senator Bill Fink
Senator Michael Gronstal
Senator James Kersten
Representative Chuck Gipp
Representative Ralph Klemme
Representative David Osterberg
Representative David Schrader
Mr. Darrell Eaton, Marshalltown
Ms. Elizabeth Garst, Adel
Ms. Bridget Nixon, Altoona
Mr. Scott Young, Des Moines

COMMITTEE PROCEEDINGS

The Committee was initially authorized two meeting days, but received Legislative Council approval to hold a third and a fourth meeting. The meetings were held on September 29th, November 18th and 19th, and January 24th. The remainder of this report summarizes the proceedings of the four meetings.

SEPTEMBER 29, 1993, MEETING

The first meeting of the Committee began with an on-site visit to a leaking underground storage tank community remediation project in Adel, Iowa. The tour was conducted by Mr. Robb Hubbard, Underground Storage Tank (UST) Program Administrator, Mr. Keith Bridson, Department of Natural Resources, Mr. Steve Hardy, Environmental Resource Services, and Mr. Terry Lutz, McClure Engineering Company. Following the tour, a public hearing was held at the Raccoon Valley State Bank. The testimony presented at the public hearing focused upon the actions that had been taken by various parties as required by the DNR and the UST Fund in relation to the Adel community remediation site. In addition to all of the members of the Committee, representatives from the DNR and the UST program were in attendance as well as many of the property owners who had been involved in the community remediation site.

The Committee met at the State Capitol for the afternoon portion of the meeting which began with a presentation by Mr. Jeff Robinson, Legislative Fiscal Bureau, and member of the UST Board. Mr. Robinson gave a detailed analysis of the financial workings of the UST program. Ms. Jane McAllister, an attorney with the Ahlers law firm, addressed the issue of marketability of contaminated property and offered several recommendations for methods to increase marketability. The following local officials offered testimony on various issues relating to their roles in assessing contaminated property: Mr. John O'Neill, Pottawattamie County Assessor, explained how property assessments are made; Mr. Mike Johnson, Carroll City Manager, informed the Committee of the successful bioremediation that took place in Carroll; and Mr. Richard L. Horn, Ames City Assessor, addressed the issue of valuation and assessment of contaminated property.

NOVEMBER 18TH MEETING

The second meeting began with a presentation by Mr. Bob Galbraith, Attorney General's Office, who serves as legal counsel to the Underground Storage Tank Fund Board. Mr. Galbraith discussed the UST fund remedial account program, including eligibility for benefits for various claimants, qualifying dates, a table of corrective action costs, UST board policies, letter applications and time extensions, underwritten sites, settlements, and claims prioritization and appeals.

Mr. Jeff Robinson, Legislative Fiscal Bureau and member of the Underground Storage Tank Fund Board, presented extensive information depicting the kinds of fund claimants, including large owners, small owners, and political subdivisions. Mr. Robinson stated that the total expenditure of the fund for present claims is \$342 million and that the program is growing faster than sites are being cleaned up. The current amount available to pay the claims is approximately \$203 million.

Mr. Ed Kistenmacher, Petroleum Marketers of Iowa, discussed the present state of the petroleum marketplace. He stated that approximately 35 percent of the marketers will leave

the marketplace, indicated that owners are afraid of catastrophic cleanup costs, and suggested low-interest loans may be helpful to cover these costs.

Mr. Barry Nadler, Attorney, Ames law firm of Newbrough, Johnston, Brewer, Maddux, and Nadler, provided the Committee with anecdotal information based on discussions he has heard by hundreds of marketers across the state regarding their financial positions. He stated that the costs of upgrades and cleanup will force the smaller tank owners to go out of business.

Mr. Lee Daniels, Regional UST Program Manager, Region VII, United States Environmental Protection Agency, discussed the federal history of the UST legislation and the federal requirements that the state is obligated to meet.

Mr. Jim Clemenson, LUST Trust Fund Program Coordinator, Region VII, United States Environmental Protection Agency, discussed alternative technologies and federal cleanup standards.

The afternoon portion of the November 18 meeting consisted of two separate panel discussions. The first panel consisted of Professor Gene Parkin, Director, Center for Health Effects of Environmental Contamination, University of Iowa (CHEEC); Mr. Pete Weyer, Program Coordinator, CHEEC; Professor Pedro Alvarez, Assistant Professor, Environmental Engineering, University of Iowa; Mr. Michael Vermace, Ph.D. student, Environmental Engineering, University of Iowa; Ms. Gayle Farrell, Environmental Resource Services; and Mr. David Cisiewski, Best Demonstrated Available Technology Environmental, Inc. The panel discussed the environmental and health effects of petroleum contamination and the validity of certain cleanup methods, particularly bioremediation. The panel also discussed the present site classifications and cleanup standards and certain members recommended changes in high-risk site classifications and the length of time for monitoring requirements.

The second panel consisted of Ms. Gayle Farrell, Mr. David Cisiewski, and Mr. Keith Bridson, Supervisor, Underground Storage Tank Division, Department of Natural Resources, and Mr. Robb Hubbard, Underground Storage Tank Program Administrator. The second panel continued the discussions initiated earlier by explaining policies behind current requirements which exist in the program and focusing on what specific changes could be made to the program.

NOVEMBER 19TH MEETING

The focus of the third meeting day on November 19th was on administration of the program and other miscellaneous issues. Mr. Eddie Cox, Petro Equipment Co., Iowa Petroleum Equipment Contractors Association, and Ms. Barbara Burnett, Attorney, Brown, Winick, Graves, Donnelly, Baskerville and Schoenbaum, requested that the Committee recommend that technical standards for all underground storage tank installations be uniform

throughout the state, that a statewide system for licensing installers be implemented, and that a "state of the art" defense be established in actions for cost recovery against installers.

Mr. Warren Jenkins, Chief Deputy Auditor of State and Mr. Kasey Kiplinger, Deputy Auditor of State discussed the January 1993 performance audit issued by the Auditor of State as well as other audits of the UST Fund Board and the conclusions that were made in those audits.

Mr. Jim Clemenson, Leaking Underground Storage Tank (LUST) Trust Fund Program Coordinator, Region VII, United States Environmental Protection Agency, discussed streamlining initiatives that have been developed by the EPA, the relative successes experienced by other states that have undergone streamlining, and DNR's lack of participation in the EPA's streamlining initiatives.

Mr. David Smitherman, Iowa Petroleum Council, Underground Storage Tank Task Force, presented the Task Force proposal which included recommendations regarding marketability of property and a 0.6 cent increase in the environmental diminution charge.

The morning session of the meeting concluded with a discussion between Mr. Allan Stokes, Environmental Protection Division, Administrator, Department of Natural Resources, and Mr. Robb Hubbard, Underground Storage Tank Program Administrator, and the Committee. The focus of the questions from Committee members was on the interplay between the DNR and the Fund program.

Mr. David Lyons, Insurance Commissioner, UST Fund Board Chairperson, concluded the presentation portion of the meeting by discussing the future of the program and the possibility of privatizing the insurance program, revamping the loan guarantee program, and moving the authority over the installers and inspectors program to another area of state government.

JANUARY 24, 1994. MEETING

During the fourth and final meeting the Committee considered proposed drafts of the various provisions and made the following recommendations:

1. Create a dual high-risk site classification based upon whether the contamination is affecting a potable or nonpotable water source. Remove references to the word "potential" contamination and the term "likely to affect". Under current law, high-risk sites upon which the contamination is not affecting a potable water source will not have to undergo corrective action. However, the Department of Natural Resources may order additional remediation as necessary for an emergency response.

2. Reduce mandatory monitoring on low risk sites from 12 years to 5 years. This would require monitoring four times per year for the first two years and two times per year for the remaining three years.

3. Increase the maximum amount of money that is diverted from the use tax to the underground storage tank fund so that it is equivalent to the amount that the environmental protection charge raises. The maximum amount that is allocated to the underground storage tank fund is \$15,300,000 although additional moneys were generated from the environmental diminution charge.

4. Require Iowa assessors to adopt national standards which take into account environmental contamination for the valuation and assessment of environmentally contaminated property.

5. Move administration of the installers/inspectors program from the Underground Storage Tank Program to the State Fire Marshal's Office. Require licensing for underground storage tank installers, liners, testers, and removers.

6. Limit the UST Board's ability to issue bonds to those with a redemption date no later than December 31, 2014.

7. Provide protection from liability for corrective action costs for purchasers of property in the following situations:

a. If an environmental audit has been performed which does not indicate the presence of contamination, the purchaser is not responsible for contamination which is discovered subsequent to the purchase of the property.

b. If a purchaser buys property upon which a corrective action plan has been completed, the purchaser is not responsible for further corrective action.

c. If an environmental audit indicates that contamination is present on the property, a purchaser can limit the purchaser's liability to 150 percent of the agreed upon costs of corrective action. If a purchaser expends 150 percent, the purchaser must use reasonable efforts to sell the property.

8. Allow a person who is subject to a cost recovery action to require any potentially responsible party to contribute to corrective action costs. Establish finality of settlements between a potentially responsible party and the Department of Natural Resources or the UST Board for payment of corrective action costs.

9. Exempt small businesses from payment of the environmental offset. "A small business" is defined as a business that is independently owned and operated, owns no more than twelve tanks at no more than two different tank sites, and has a net worth of \$400,000 or less. An environmental offset is a fee that is offset against benefits received and is based upon

the average annual environmental protection charge on distribution which would be paid for taxes of a similar size to the tanks that used to exist on the site.

10. Allow for the transfer to a subsequent purchaser of clean certificates and monitoring certificates which indicate that the site has been declared a no-action site or the site is only being required to monitor and not to undergo cleanup.

11. Define owner or operator for purposes of receiving remedial benefits, to include a subsequent purchaser of property upon which corrective action has been taken and for which the fund has expended money.

12. Encourage the Department of Natural Resources to continue with efforts to streamline the program to make it more efficient. Current streamlining efforts by the Department include implementing an additional Chapter 28E agreement with the UST Board to fund the costs of groundwater professionals to assist with evaluation of site cleanup reports and corrective action design reports and retaining a computer support person.

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